

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

ERIN ALBERTS, on behalf of herself )  
and all other similarly situated, )  
Plaintiffs, )  
v. ) Civil No.: 1:13-cv-12262  
PAYLESS SHOESOURCE, INC. )  
Defendant. )  
\_\_\_\_\_  
)

**DEFENDANT'S MOTION TO DISMISS OR,  
ALTERNATIVELY, FOR SUMMARY JUDGMENT**

Defendant Payless Shoesource, Inc. ("Payless") hereby moves to dismiss Plaintiff's Class Action Complaint pursuant to Fed. R. Civ. P. 12(b)(6) or, alternatively, for summary judgment pursuant to Fed. R. Civ. P. 56. The grounds for this Motion are more fully set forth in the Memorandum of Law filed herewith.

**WHEREFORE**, Defendant Payless Shoesource, Inc. respectfully requests that the Court either dismiss this case or enter summary judgment in its favor.

Dated: November 15, 2013

Respectfully submitted,

/s/ Ana M. Francisco

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**ATTORNEYS FOR PAYLESS  
SHOESOURCE, INC.**

**REQUEST FOR ORAL ARGUMENT**

Defendant wishes to be heard on this Motion and believes that a hearing may assist the Court. Accordingly, pursuant to Local Rule 7.1(d), Defendant submits this request for oral argument.

**LOCAL RULE 7.1(a)(2) CERTIFICATION**

In accordance with Local Rule 7.1(a)(2), counsel for the Defendant state that they have made a good faith effort to confer with the Plaintiff's counsel to resolve the matters raised by this Motion.

*/s/ Ana M. Francisco* \_\_\_\_\_

**CERTIFICATE OF SERVICE**

I, Ana M. Francisco, hereby certify that I have this 15<sup>th</sup> day November, 2013 caused to be filed the foregoing and all associated documents through the Court's CM/ECF system, a copy of which will be sent to all registered participants by electronic mail. Any party not receiving electronic notice will be served by U.S. Mail.

/s/ Ana M. Francisco